Court No. 2.

Civil Misc. Writ Petition No. 1969 (M/S) of 2001
(Old No. 51861 of 1999)

State of U.P. through Executive Engineer
Upper Ganga Canal, Modernization Division -6,
Roorkee, District Haridwar. …… Petitioner.

Versus

The Presiding Officer, Labour Court
Dehradun and another. …… Respondents.

Hon'ble P.C.Verma,J.

This writ petition has been filed by the petitioner-State of Uttar Pradesh against the order dated 21.7.1999 passed by respondent No.1, by which the application for setting aside the exparte award dated 30.9.1998 and to restore the case and with a further prayer to accept to accept the written statement of the State and then after considering the facts stated in the written statement to decide the case on merit was rejected.

The award was made on 30.9.1998 and was finally published on 13.2.1999. The application was moved on 9.6.1999. The learned counsel for the petitioner that in the application, which was supported by an affidavit, delay was explained for restoration of the case. The Labour Court without considering the explanation of the petitioner rejected the application on the groud that it was moved beyond thirty days. Therefore, the order is liable to be set aside.

The learned counsel for the respondent No. 2 submits that for setting aside the exparte order, application must be moved within thirty days from the date of publication and beyond thirty days, application could not be entertained and has rightly been rejected as the provisions of Sec. 5 of Limitation Act are not applicable. He relied on a judgment of Allahabad High Court, reported in (1997) 2 of U.P. Local Bodies and Educational Cases, 1274, State of U.P. and another versus Bachai Lal and another. T he Allahabad High Court after considering Rule 16 of the U.P. Industrial Disputes Rules and the Full Bench judgment of the Allahabad High Court and Apex Court held as under:-

"In Badri Prasad Haridas v. Bartan Nirmata Majdoor Sabha, (1984) 1 UPLBEC 56 a Full Bench of this Court has dealt with the question in the following words:

> "Under sub-rule (2) of Rule 16, it may be correct that the word used is "order", but once an order is set aside, the necessary

> Consequence is that award given in pursuance of the decision of the Labour Court or Tribunal to proceed ***ex-parte*** would automatically fall down Sub-rule (2) of Rule 16 is an enabling provision and, therefore, if sufficient cause has been shown by the party against whom case has proceeded ***ex-parte***, the party would become entitled to be heard. If it becomes entitled to be heard, it necessary follows that if any award has been given against him, that is liable to be set aside."

The Full Bench went on to hold further:-

"It may be correct that the Act does not confer any power on the Labour Court or Tribunal; to set aside the award once it has been finally made, but the Rules have to recall an award given ***ex-parte*** would be found lacking."

In Grindleys Bank Ltd. V. Central Government Industrial Tribunal and others, AIR 1981 SC 606 it has been observed as under:

"Power to proceed ***ex-parte*** under Rule 22 carries with it power to inquire whether or not there is sufficient cause for the absence or a party at the hearing", and further, "The proceedings with regard to reference under Section 10 of the Act are, therefore, not deemed to be concluded until expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction and upto the date it has the power to entertain an application in connection with the reference in dispute. That stage is not reached till the award becomes enforceable under Section 17-A.

The next question that arises for consideration is as to whether the application filed after ten days of the ***ex-parte*** award is maintainable. In my opinion, the Labour Court retains jurisdiction to entertain an application for setting aside an ***ex-parte*** award at least till the award attains finality under Section 6 of the Act ***albeit*** according to Grindleys Bank Ltd. (supra), it retains jurisdiction " until expiry of 30 days from the publication of the award" It is another thing that the jurisdiction can be invoked only upon sufficient cause being shown for absence."

In Para 10 of the judgment, the Court has categorically held that the Labour Court ceased to have the seisin of the dispute referred to it after expiry of thirty days from the publication of the award.

I fully agree with the view taken by Hon'ble Single Judge of Allahabad High Court. Therefore, I do not find any merit in the writ petition. The Labour Court has rightly rejected the application of the petitioner as it was moved beyond thirty days from the date of publication when the award became enforceable.

Accordingly, the petition is dismissed. No order as to costs.

(P.C.Verma,J.)

14.3.2002
P.Singh